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WATER RESOURCES

1972

REPORT NO. 53
To the 43rd Legislative Assembly

MONTANA LEGISLATIVE COUNCIL
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Helena, Montana

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WATER RESOURCES

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RECOMMENDATIONS

The Montana Legislative Council recommends:

1. *That this interim committee be retained for an additional biennium.*

2. *That a petition, signed by 10% of the registered voters residing within the boundaries of a proposed water conservancy district, be submitted to the Board of Natural Resources and Conservation prior to the consideration by said Board of any preliminary conservancy district studies.*

   That the costs of all preliminary and feasibility studies be considered as costs of constructing the approved project and included in repayment schedules.

3. *That a critique be formulated for each active project and also those inactive projects in which title to land is vested with the Water Resources Division. Such critiques should include:*

   (a) *Total state investment in the original construction of the project.*

   (b) *Total state investment recovered to date through sale of water and value of unsold water reserves.*

   (c) *Historical listing of state expenditures for project operation and maintenance and related repayment to date.*

   (d) *Description of state-owned real or personal property attached to the project, including water rights, if any.*

   (e) *A multi-use economic analysis to determine the viability of the state's interest in each project.*

4. *That the water marketing and water purchase contracts be revised so as to allow flexibility in future rate-setting procedures.*

5. *That, coincidental with individual project critiques, the Water Resources Division give immediate consideration to installation of adequate measuring devices where needed.*

6. *That the costs of installing measuring devices, net of any federal assistance, be borne by the project if such installation is for the primary benefit of the project.*

7. *That the Board of Natural Resources set up capital accounts for each project that are open-end in nature evidenced by a promissory note and to be set on reasonable payments based on the association's ability to repay.*

8. *That for any capital improvements on projects for which bids must be let, if the bid of the lowest responsible bidder exceeds the project engineer's original estimate by more than 5%, the approval of the project user association be obtained before any bid is accepted.*

9. *That the engineering bureau of the Water Resources Division conduct periodic inspections of each active project and report on the adequacy of system maintenance. Such inspections should include verification of distribution reports and servicing of measurement devices.*

   That, in conjunction with the implementation of the statewide budgeting and accounting system, the Central Services Division of the Department of Natural Resources and Conservation develop a system of cost accounting which would allocate all overhead or indirect project costs to individual project accounts. Such indirect costs would include, but would not be limited to, all administrative, engineering and bookkeeping expenses which were attributable either in whole or in part to the Department's involvement in project operations.

   That each water user association be furnished an annual statement of all direct and indirect costs incurred by the Department of Natural Resources and Conservation and allocated to such project during the preceding budget year.

   That the repayment of all direct and indirect O & M costs incurred by the state be included in the project operation and maintenance budget for the ensuing year.

10. *That a constitutional amendment be proposed to the 43rd Montana Legislative Assembly deleting Article 11, Section 18 of the Montana Constitution of 1972.*

11. *That the Board of Natural Resources and Conservation be empowered to sell, transfer, abandon or otherwise dispose of any project rights-of-way, easements or other property when it determines that the same is no longer needed for any state purposes. Specific options which should be available to the Board would*

include, but would not be limited to:

(1) Retain title to the project.

(2) Release title to project through:

(a) Sale of project at public auction.

(b) Sale of project directly to authorized user association.

(3) Transfer of project title to State Department of Lands.

HOUSE RESOLUTION NO. 32

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE LEGISLATIVE COUNCIL TO STUDY, IN DETAIL, ALL ASPECTS OF THE MONTANA WATER RESOURCES BOARD.

WHEREAS, the Water Resources Board has many varied and complex functions and duties, and

WHEREAS, the Water Resources Board requires a large appropriation for its operation, and

WHEREAS, the operations of the Water Resources Board requiring such an appropriation should be fully understood by all people affected.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council study all phases of operation of the Water Resources Board.

BE IT FURTHER RESOLVED, that the study include reviewing and evaluating the plans and policies of the Water Resources Board.

BE IT FURTHER RESOLVED, that the legislative council use the services of the legislative auditor and the legislative audit committee.

BE IT FURTHER RESOLVED, that the study include reviewing all water projects of the Board and evaluate the policies with regard to each project.

BE IT FURTHER RESOLVED, that a detailed analysis be made of the costs of the operation and maintenance of each of the projects of the Board.

BE IT FURTHER RESOLVED, that the study determine if proper operation, and maintenance charges are being made on the projects.

BE IT FURTHER RESOLVED, that the legislative council review the legal aspects of relinquishing projects to water users and request the cooperation and assistance of the Attorney General in making legal determinations of the relinquishment of said projects.

BE IT FURTHER RESOLVED, that the study be conducted in a comprehensive and complete way in order that the public and

members of the legislative assembly be better informed as to all functions of the Water Resources Board.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the chief clerk of the House of Representatives to the Honorable Robert Woodahl, Attorney General of the state of Montana, the Legislative Auditor, and the Executive Director of the Legislative Council.

SUMMARY

It is not difficult to trace the development of Montana state government's involvement in water resource management over the past thirty-five years. A more difficult task is to identify a single state policy applicable to all the administrative responsibilities which have been assigned to various executive agencies over the same period. It is timely, however, that both the executive and legislative branches take time to evaluate state policy with regard to the management of water in Montana, as regional and national forces are currently necessitating prompt action in this regard.

Beginning with the "dust bowl" era of the 1930's, Montana and other western states have attempted to formulate policies for the development of their water resources which met priorities set locally and at regional and national levels. During the period 1935 through 1945, priorities for water use in Montana centered around agricultural development. A sometimes irreconcilable national goal during this period was the alleviation of chronic unemployment through public works projects. As a result of federal/state water development activities in this early period, numerous conservation projects were constructed around Montana for the benefit of various economically depressed areas. These projects have since been operated under the continuous stewardship of a state agency: the State Water Conservation Board (1935-1967); the Montana Water Resources Board (1967-1971); and the Water Resources Division of the State Department of Natural Resources and Conservation.

Concurrent with the administration of individual conservation projects aimed at enhancing agricultural development, other local conditions have forced a broadened concept of water resources management in Montana. Locally, increased demands upon available water supplies for recreation, flood control, municipal and industrial uses make management considerations much more complicated than in the past. Management has been made even more difficult by the demands of southwestern states for a share of the so-called "surplus" water owned by their neighbors to the north, including Montana.

The changing attitudes toward water use in Montana have been evident in all branches of state government. As a single-purpose resource, legislative guidance and executive administration were primarily a matter of protecting individual water rights and developing projects which were economically sound from an agricultural standpoint. The judicial branch, on the other hand, continues to have the more difficult role as arbiter in disputes between holders of water rights on streams whose available waters have been grossly over-appropriated.

With the advent of water as a multi-purpose resource, the roles of Montana's legislative and executive branches have become more sophisticated in nature. Executive agencies such as the Department

of Health and Environmental Sciences and the Fish and Game Department, which before had only a cursory interest in water, are now deeply involved in water management and administration. For the Montana Legislature, the transition has been effected by conflicts between various constituent groups, each claiming priorities for the "beneficial use" of Montana water. In an attempt to reconcile these groups, and in response to passage of the Colorado River Act, the legislature passed the Water Resources Act in 1967 and the Water Conservancy District Act in 1969. These two pieces of legislation were aimed at the orderly development of state water for use by beneficial interests both in Montana and in neighboring states. The responsibility for administering the two acts was given to the Water Resources Board, in addition to their duties relative to individual water conservation projects. Both acts gave the Water Resources Board quasi-judicial powers in developing the State Water Plan and determining the feasibility of proposed water conservancy districts.

The Council's study of the Montana Water Resources Board coincided with two other reviews of the agency and its administration done by the Commission on Executive Reorganization and the Legislative Auditor. The Commission on Executive Reorganization concluded that the Water Resources Board, meeting only every other month, spent most of its time reviewing the administrative activities of its staff. The Commission also found that while the Board had many legitimate quasi-judicial and quasi-legislative powers, they very seldom exercised these powers. As a result of their study, the Commission on Executive Reorganization recommended that the Water Resources Board be abolished and its functions transferred to a multi-agency Department of Natural Resources and Conservation. A five-member Board of Natural Resources and Conservation and a corresponding administrative department were created under the Executive Reorganization Act of 1971.

The Legislative Auditor conducted an in-depth review of the activities of the Montana Water Resources Board through June 30, 1970. A copy of the auditor's findings was mailed to all legislators in the fall of 1971. The Legislative Auditor's report contained nineteen major and fifty-two other recommendations for improving Water Resource Board operating practices. Most of these recommendations dealt with accounting practices in use by the agency at the time of examination. The auditor's staff also made on-site inspections of a selected group of water board projects and interviewed officials of various water user associations.

The Council has reviewed the Legislative Auditor's report in detail and has discussed the recommendations contained therein with the administrative officials of both the Department of Natural Resources and Conservation and its predecessor, the Water Resources Board. These officials have assured the Council that action is being taken to implement all recommendations made by the Legislative Auditor. One exception was the auditor's recommendation that the Water Resources Board seek legislation to

delete statutes relating to the Board's Earmarked Revenue Fund Account and finance their operations wholly out of the State General Fund. The Water Resources Board considered this recommendation and voted to continue utilizing a combination of earmarked and general funding.

At this time, the Council makes no recommendations relative to the organization of the Water Resources Division of the Department of Natural Resources and Conservation. As of the writing of this report, the Department of Natural Resources and Conservation was still in the process of implementing their reorganization plan. Any efficiencies arising from reorganization of the Water Resources Board will not become evident until the new Board and its administrative division heads are able to formulate operational plans or until personnel deemed to be unnecessary are deleted through attrition.

The Council's study of Water Resources Board projects consisted of a determination of the state's investment in each active and inactive project and a comparison of this information with corresponding revenues received and receivable for each project. This financial data was used as background for topical discussions with representatives of the Water Resources Board and various water user associations. Based on this review, and information supplied by the Legislative Auditor, the Council makes the following observations with regard to the current status of Water Resources Board projects:

1. The feasibility of constructing many projects was based on unreliable financial information. As a consequence, additional water must be sold on most projects in order to recover the state's investment.

2. While several state statutes require that Water Resources Board projects be operated in a self-sustaining manner, few projects have met this requirement.

3. The State of Montana has retained interest in inactive project lands even though the project is of no apparent value to the state nor represented by an association of users.

4. Most current water marketing contracts with user associations and many water purchase agreements have been in default for the past 25 to 30 years.

The Council has found that State General Fund appropriations have been used to subsidize operations and maintenance of forty-three projects in recent years. In the absence of any comprehensive cost-benefit studies, however, the Council was unable to determine whether such subsidies were justified in the public interest. The recommendations contained in this report, as well as those

appearing in the Legislative Auditor's examination report, are intended to protect the state's interests in water projects and to provide the legislature with information needed to make viable judgments as to future financing of project operations.

Due to the fact that the administration of Montana water law is now undergoing reorganization, and administrative improvements recommended by the Legislative Auditor are in the early stages of implementation, the Council feels that continued legislative review of progress in these areas is necessary.

The Legislative Council recommends that this interim committee be retained for an additional biennium.

DEVELOPMENT OF THE STATE'S ROLE IN WATER MANAGEMENT

1892-1935
CAREY LAND ACT BOARD

With the advent of railroad transportation in the West, families from eastern states began moving into previously uninhabited areas of Montana. As many of these areas lacked sufficient water to support agriculture, homesteaders in Montana and other western states petitioned the United States Congress for aid in obtaining irrigation projects for their lands. Washington responded by passing the Carey Act in 1894 which granted one million acres of land to Montana and other western states on the condition that each state provide for irrigating the lands granted.

To comply with the federal Carey Act, the 1895 Montana Legislative Assembly created an Arid Land Commission, which subsequently became the Carey Land Act Board through legislative amendment in 1903. This board, composed of the Governor, Secretary of State and the Attorney General, surveyed and later constructed irrigation projects on federal lands granted under the Carey Act. These projects made it possible to enter and develop land which had previously been unfit for settlement. Sections 1966-1995, R.C.M. 1921, allowed the Carey Land Act Board to lease or transfer title to completed projects to persons residing in the project area. There is no reliable information as to how many irrigation projects were undertaken by the Carey Land Act Board during this period; however, it is estimated that some 150 surveys or investigations were made, of which about 45 resulted in subsequent construction.

1935-1967
WATER CONSERVATION BOARD

The nationwide depression of 1933 coincided with severe drought

conditions in Montana which threatened to destroy the state's farming and livestock industries. Montana Governor Cooney requested that Montana be granted funds from the Federal Public Works Administration Program in order to build needed water conservation projects while at the same time easing the dire unemployment situation existing throughout the state. President Roosevelt assured Governor Cooney that if Montana would create a central state agency through which the federal government could buy revenue bonds, the Public Works Administration would finance a state water conservation program to the extent of $5 million.

The Montana Legislature immediately began work on legislation to comply with these federal conditions. In 1933, a special session passed House Bill 39, which was amended in 1935 as the State Water Conservation Board Act. This act declared as its purpose the encouragement of public works and the reduction of unemployment in the interest of national recovery. It required the construction of a system of works for the conservation, development, storage, distribution and utilization of water. The act stated that the funding of projects constructed would be by state or federal grants, state appropriation, sale of revenue bonds, or through a combination of these methods. The Water Conservation Board was given authority to file on all unappropriated waters of the state and the right of eminent domain to acquire lands needed for projects.

Most all water storage or distribution projects currently administered by the state were constructed under the provisions of the Water Conservation Board Act during the 33-year existence of the Water Conservation Board. Present problems in managing these projects noted by the Council during the course of this study originated out of the methods used for project investigation, finance and construction during this period. The federal-state partnership created by the Water Conservation Board Act brought with it many federal restrictions and conditions which, at times, were in conflict with the objectives of the Montana administrations. Some cases where this conflict resulted in project inefficiencies were:

1. The depressed economic situation nationwide prompted the Public Works Administration to set deadlines for local project applications. The Water Conservation Board was consequently forced to make decisions as to project priorities based on incomplete surveys.

2. The main objective of the Public Works Administration was to alleviate chronic unemployment in various localities around the country. The Water Conservation Board, while equally desirous of immediate economic improvement in Montana, felt that well-designed water delivery systems could best stabilize Montana's agricultural economy both in meeting the immediate situation and for the future. Consequently,

many projects deemed unfeasible by the Board received allocation of federal funds because of their location in areas of heavy unemployment. Sometimes, the Board would not receive notice of these project grants until they were announced by the Congressional Delegation.

3. Planners in Washington were ignorant of geographic conditions on the proposed project sites and tended to set unrealistic dates for starting construction. As a result, the Water Conservation Board was often caught short of matching state funds needed to enter into construction contracts. This caused costly delays of payments to contractors and expensive change-orders during construction.

4. Federal agencies required that projects furnish only supplemental water to existing distribution systems. This requirement had a major effect on state costs in that few adequate distribution systems then existed in Montana. Projects meeting this federal criteria benefited only a small land area and required ongoing state expenditures to build delivery systems which would supply users not able to utilize supplemental water.

5. As a prerequisite to obtaining federal grants, the Water Conservation Board had to obtain advance water purchase contracts from individuals residing in the area of the proposed project. Desiring to demonstrate the project to be fiscally feasible, many individuals signed water purchase contracts who had no need for water and no intention to purchase it. Consequently, the water user rates and period of repayment were based upon an unrealistic number of users and anticipated revenues did not materialize.

The foregoing problems encountered by the Water Conservation Board in constructing water projects bear directly on some of the inefficiencies noted by both the Council and the Legislative Auditor in reviewing the operations of the Water Resources Board. This point will be discussed more fully within other sections of this report.

Although the bulk of state involvement in water resources administration during the period 1935-1967 centered around the construction of water conservation projects, the legislature did delegate two major water-related responsibilities to the Water Conservation Board during this time, namely the State Electrification Authority and the State Planning Board.

The 1935 Montana Legislative Assembly created the State Electrification Authority and named the State Water Conservation Board as the authority. The purpose of this legislation was to allow the Water Conservation Board to aid in the construction of rural electrification projects. In practice, Water Conservation Board participation in this program consisted of providing engineering and consulting services to electrification projects constructed with loans granted by the Rural Electrification Administration. Between 1935 and the repeal of the State Rural Electrification Act in 1953, the Water Conservation Board furnished engineering services to 23 cooperatives at a cost to the state of $1,224,348, including indirect administration expenses. Repayments by cooperatives were $1,123,183, resulting in unrecovered program costs of $101,165.

The State Planning Board was created by the 1935 Legislative Assembly. The act designated five members of the State Water Conservation Board as the State Planning Board responsible for developing state policy in the area of natural resource conservation. Over the years, the functions of the State Planning Board have been divided organizationally between the State Department of Natural Resources and Conservation, the State Department of Planning and Economic Development and several smaller agencies.

The 1965 legislature abolished the office of the State Engineer and the Carey Land Act Board, transferring both functions to the Water Conservation Board.

1967-1971
STATE WATER RESOURCES BOARD

In 1967 the Montana Legislative Assembly took action to coordinate the development of the state's water resources through the creation of the Water Resources Board (Sections 89-101 through 89-132, R.C.M. 1947). Under the Water Resources Act, the Water Conservation Board was abolished and its powers and duties transferred to the Water Resources Board. In addition, the act designated the Water Resources Board as the agency responsible for administering the newly enacted weather modification laws and instructed the Board to prepare a comprehensive inventory of the state's water resources and a multiple-use State Water Plan.

As Water Resources Board activities related to the preparation of the State Water Plan have represented the largest expenditure of state appropriations in the past four years (see Table 2), the remainder of this section will be devoted to a discussion of how Montana's responsibilities in this area have developed.

Passage of the 1967 Water Resources Act was prompted by the anticipated passage of the "Colorado River Basin Project Act" in the United States Congress. While this federal act was not in fact passed by Congress until September 30, 1969 (Public Law 90-537), it had been under congressional consideration for more

than twenty years.

Conflicts between southwestern states over utilization of water supplied by the Colorado River have been increasing in magnitude over the past ten to fifteen years. The states of California and Arizona have had dramatic population increases which have placed great demands on the waters of the Colorado River and its tributaries. Projections of future population trends for these two states clearly indicate that existing supplies of water will have to be augmented in the near future in order to prevent a crisis situation throughout the Southwest.

The purpose behind the Colorado River Basin Act is to eventually provide means of transferring large quantities of water into the Colorado River Basin from drainage basins located in other western states. As a first step to accomplishing this, all states lying "wholly or in part west of the Continental Divide" are required to conduct complete reconnaissance investigations for the purpose of developing a plan demonstrating each state's present and future requirements for water. In order to give the affected states time to prepare these needed studies, the act placed a ten-year moratorium on studies of inter-basin transfers of water between states.

Most state water experts agree that at the termination of the ten-year moratorium on September 30, 1978, plans will be proposed for an inter-basin transfer of Montana water to augment the flow of the Colorado River. The main source of this transfer will probably be from the Columbia River Basin in northwestern Montana, which accounts for approximately 60% of the total annual stream flow leaving Montana (see Table 1).

TABLE 1

Estimated Annual Flow in Major Montana Drainage Basins
(in millions of acre feet)

Basin	Enters State	Leaves State	Originating in State
Missouri River	6.73	16.70	9.97
Columbia River	8.16	25.31	17.15
Hudson Bay	0.00	00.86	00.86
Totals	14.89	42.87	27.98

Source: Montana Water Resources Board

It was the need to prepare sound estimates of Montana's present and future needs for water in compliance with the provisions of the Colorado River Basin Act which led to the passage of the Montana Water Resources Act. In fact, Section 2(9) of the act states that "To . . . protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive coordinated multiple-use water resource plan be progressively formulated, to be known as the "State Water Plan." In order to complete the legislative mandate of completing a comprehensive "State Water Plan" within the ten-year moratorium period, the Water Resources Board designed a four-phase program, as follows:

1. An inventory phase to accumulate detailed knowledge of present water resources and water management. Originally, it was planned to computerize the raw data obtained from this inventory; however, the information was not of a reliable nature due to changes in known water rights and stream appropriations. Included in this phase is the publication of Inventory Series Reports on various water-related topics. Of the eleven such publications completed to date, half are compilations of information available from other sources, such as directories of water-related organizations and programs of other public and private groups and a bibliography of water resources and related publications.

2. A water requirements and projection phase designed to complement the data derived in Phase One and allow the Water Resources Board to estimate surpluses or deficiencies in present water delivery and recommend developments for the future. The initial stages of this work will involve recommendations for development through 1980; however, the Board plans to develop tentative projections for the years 2000 and 2020 in order to be in line with other planning now taking place in the West.

3. A phase recommending firm water development objectives to be accomplished between the present and 1980 and by the years 2000 and 2020. These recommendations will be based on the results of Phases One and Two and on the comprehensive Statewide Development Plan now being formulated by the State Department of Planning and Economic Development.

4. An implementation phase, which will actually be an ongoing program whereby the information developed during the prior three stages is acted upon. All data and recommendations as to the state's current and future demands for water will be put into a format compatible with other western state studies in preparation for inter-basin transfer studies scheduled to begin shortly after September 30, 1979.

In order to prepare the State Water Plan, the Water Resources Board has organized into four major departments: Administration, Engineering, Water Resources and Planning. A capsule description of the functions of each department follows, along with a summary of each department's financial plans for the fiscal year July 1, 1971 through June 30, 1972.

ADMINISTRATION

The functions performed under the administration program are: general management, public information, accounting, legal matters, and records preservation. Responsibility for the general management of all Board activities is vested with the Director and his assistant, who are also responsible for the preparation and conduct of meetings, assisting department directors with management, office management and personnel management.

Board public relations were performed by a Public Information Director, supervised by the Director, who prepared and disseminated news releases concerning Board activity. The position of Public Information Director was dropped following reorganization of the Water Resources Board in late 1971.

Board accounting activities are performed by the Accounting Division of the Administrative Department. The division accounts for legislative appropriations and does general accounting for all Board departments. The division is also responsible for accounting for federal and state funds expended on new project construction, recreational development, and the State Water Plan.

The Board is authorized to employ additional legal counsel with the Attorney General's consent (Section 89-103, R.C.M. 1947) and has employed a part-time attorney to provide legal services. The attorney defends actions in which the Board is named as a co-defendant with local water user associations. He also renders opinions on proposed Board actions and aids local water user associations by advising them on contractural matters, injury and damage actions, and negotiations with federal agencies.

Funding and Personnel - FY 1972 - Administration

Full-time equivalent employees		9
Proposed expenditures by object:		
Personal Services	$ 92,288	
Operations	41,497	
Capital Outlay	1,661	
Total		$ 135,446
Funding for above:		
General Fund	$ 95,767	
Earmarked Revenue	39,679	
Total		$ 135,446

ENGINEERING

The Engineering Department is responsible for general engineering, Daly Ditches operation and maintenance, hydrography and field programs. Although allowed to construct water storage projects under the authority granted the Water Resources Board's predecessor, the Water Conservation Board, the Engineering Department has not done so due to a shortage of construction funds available for this purpose. Instead, the Engineering Department has transferred its emphasis from construction to providing engineering services to local groups and water user associations, assisting in the maintenance of previously constructed projects, accumulating stream flow data, conducting annual maintenance inspections, and the operation of the Daly Ditch system.

Montana residents desiring aid in water development may request data and services from the Engineering Department. If a project proposed by residents appears feasible after survey and study by the Engineering Department, the department provides detailed engineering drawings, contracts and necessary construction supervision. In the last five years, the Engineering Department has conducted preliminary reports on thirteen proposed projects and has made detailed studies of three additional projects.

From the standpoint of expenditure of state funds, one of the major responsibilities assigned to the Engineering Department in recent years was that of assisting local residents in establishing water conservancy districts. Sections 89-3401 through 89-3449, R.C.M. 1947, set forth procedures by which a water conservancy district may be formed as well as the responsibilities of the Water Resources Board in this regard. This 1969 legislation allows any interested person living within a proposed water conservancy district to request that the Water Resources Board conduct a preliminary survey of the proposed district. The Water Resources Board, through its Engineering Department, then conducts the preliminary survey using either its own personnel or by contracting the study to a private consultant firm. The results of the preliminary survey are given to the applicant who in turn requests a hearing for the purpose of determining if the proposed conservancy district is feasible and consistent with the State Water Plan. Following this hearing, the applicant requests that the Board prepare a detailed feasibility study of the proposed conservancy district. If, after conducting the feasibility study, the Board feels that the district is feasible, it petitions the district court with jurisdiction over the area to organize a water conservancy district. The district court then fixes the time and place for an organizing election and makes public notice of the election.

While no conservancy districts have been created to date, two preliminary surveys have been completed, financed by Water Resources Board funds and prepared by two private engineering firms. The total cost borne by the state for these two studies

was $182,580. The Engineering Department's 1973 biennial budget request included an amount of $450,000 for the purposes of conducting feasibility studies of the North Central and East Central Conservancy Districts. This amount was disapproved by the 42nd Legislative Assembly.

In the Council's opinion, the current statutory procedures for initiating conservancy district studies do not provide for adequate local initiative. By allowing only a few individuals to request preliminary studies leading to the possible creation of a taxing district, persons holding views contrary to those of the applicants are prevented from discussing the proposal until after the preliminary study has been completed and a hearing is scheduled on the more comprehensive feasibility study. Furthermore, the Council finds no statutory requirement that state funds expended on preliminary and feasibility studies be reimbursed on completion of an approved water conservancy district.

The Legislative Council recommends that a petition, signed by 10% of the registered voters residing within the boundaries of a proposed water conservancy district, be submitted to the Board of Natural Resources and Conservation prior to the consideration by said Board of any preliminary conservancy district studies. (Appendix A)

The Legislative Council further recommends that the costs of all preliminary and feasibility studies be considered as costs of constructing the approved project and included in repayment schedules. (Appendix B)

Funding and Personnel - FY 1972 - Engineering

Full-time equivalent employees		19
Proposed expenditures by object:		
Personal Services	$ 179,702	
Operations	148,812	
Capital Outlay	195,798	
Total		$ 524,312
Funding for above:		
General Fund	$ 376,164	
Earmarked Revenue	148,148	
Total		$ 524,312

WATER RESOURCES

The Water Conservation Board, under its 1935 enabling legislation, was mandated to survey all Montana streams and any works directing therefrom. Such surveys were to include the measurement of stream discharge, the carrying capacity of various ditches and canals and other information concerning the relative rights of interested parties on streams, ditches and canals.

To accomplish its statutory responsibilities, the Water Conservation Board began a county-by-county survey of water rights in 1943. In conducting these surveys, Conservation Board personnel cataloged by county all recorded appropriations, decrees and use rights and mapped lands upon which water was being used. Completion of county surveys proved to be a slow process for the Water Conservation Board, as water right information on file in the various courthouses was highly complex and the Board was unable to hire adequate staff to do field investigations. Consequently, only one or two county surveys were completed annually, and the water right information contained in the surveys was often obsolete by the time of publication.

When the water resources survey function was assumed by the Water Resources Board in 1967, the new board accelerated the program by hiring additional fieldmen and draftsmen. As a result, survey reports for five counties were published during 1969 and all survey work is expected to be completed sometime in 1972.

As a comprehensive inventory of current water use as reflected in water appropriations is vital to the State Water Plan, the problem of updating water right information is of major concern to the present Board of Natural Resources and Conservation. To deal with this and other problems, a Water Law Advisory Council was formed in April, 1972, for the purpose of recommending legislation in areas relating to the administrative responsibilities of the Department of Natural Resources and Conservation. One of the goals of the Council is to devise a system of centralized water right filing which would provide a current inventory of water use throughout the state. A centralized filing system was mandated by the 1972 Constitutional Convention in Article IX, Section 1(4) of the proposed Montana Constitution.

The Water Resources Department also administers the provisions of the 1961 Ground Water Act. This responsibility includes the compiling of ground water appropriations, establishing and regulating of wells, and the compilation of an inventory of the state's ground water reserves. This latter responsibility, that of making an inventory of ground water, has been incorporated with the county-by-county water resource surveys.

Funding and Personnel - FY 1972 - Water Resources

Full-time equivalent employees		23
Proposed expenditures by object:		
Personal Services	$ 186,356	
Operations	79,417	
Capital Outlay	2,880	
Total		$ 268,653
Funding for above:		
General Fund	$ 259,220	
Federal & Private Revenue	9,433	
Total		$ 268,653

PLANNING

The Planning Department's activities center around the preparation of a State Water Plan, which was discussed earlier in this report. Currently, work is being done on both Phase I and Phase II of the Plan. Within Phase I, the department is completing inventory publications, including inventories on water use and related land resources. Under Phase II, the department has held panel discussions around northwestern Montana to discuss water demands upon the Columbia River drainage basin.

Funding and Personnel - FY 1972 - Planning

Full-time equivalent employees		14
Proposed expenditures by object:		
Personal Services	$ 153,407	
Operations	191,580	
Capital Outlay	3,300	
Total		$ 348,287
Funding for above:		
General Fund	$ 236,796	
Federal and Private Revenue	111,491	
Total		$ 348,287

1971-PRESENT
WATER RESOURCES DIVISION
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

The 1971 Executive Reorganization Act abolished the Water Resources Board and transferred its functions to a five-member Board of Natural Resources and Conservation. In recommending this transfer, the Commission on Executive Reorganization stated that much of the activity of the Water Resources Board

centered around reviewing staff activity. In the Commission's opinion, staff review would be better handled by a department administrative head. The Commission further stated that many of the quasi-judicial and quasi-legislative powers granted the Water Resources Board were not being utilized. It was also noted in this regard that some of the Water Board's powers were similar in nature to those of other bodies, such as Soil and Grass Conservation boards.

The Department of Natural Resources and Conservation, as proposed by the Commission on Executive Reorganization, would have combined the Fish and Game Commission, Montana Water Resources Board, State Forester, Grass and Soil Conservation Boards, Oil and Gas Conservation Commission, and four small advisory committees into a single state department. The Fish and Game Commission, however, was made a separate department under the Executive Reorganization Act passed by the 42nd Montana Legislative Assembly.

The Department of Natural Resources and Conservation is presently composed of eleven bureaus serving four major divisions (Figure 1). The four divisions are coordinated by the department director who serves as Chief Administrative Officer for the Board of Natural Resources and Conservation. The director and the five Board members are all gubernatorial appointees.

The four departments of the Montana Water Resources Board were incorporated into the Centralized Services and Water Resources Divisions of the Department of Natural Resources and Conservation (Figure 2). The Planning and Water Resources Departments were combined into the Resources and Planning Bureau of the Water Resources Division. The Engineering Department became the Engineering Bureau of the same division. The accounting division of the Administration Department of the Water Resources Board was consolidated with the accounting departments of other agencies as the Fiscal Bureau of the Centralized Services Division.

Other administrative activities performed by the Executive Director of the Water Resources Board are now shared between the department director and the two division administrators.

The 1973 organizational plans for the Department of Natural Resources and Conservation are not available at this time. Program appropriations made by the 42nd Legislative Assembly to the Water Resources Board are shown on Table 2. The biennial appropriation of $2,398,793 will be used to fund the Water Resources and Centralized Services Divisions during the remainder of the 1973 biennium.

FIGURE 1

Department of Natural Resources and Conservation
Organization Chart as of December, 1971

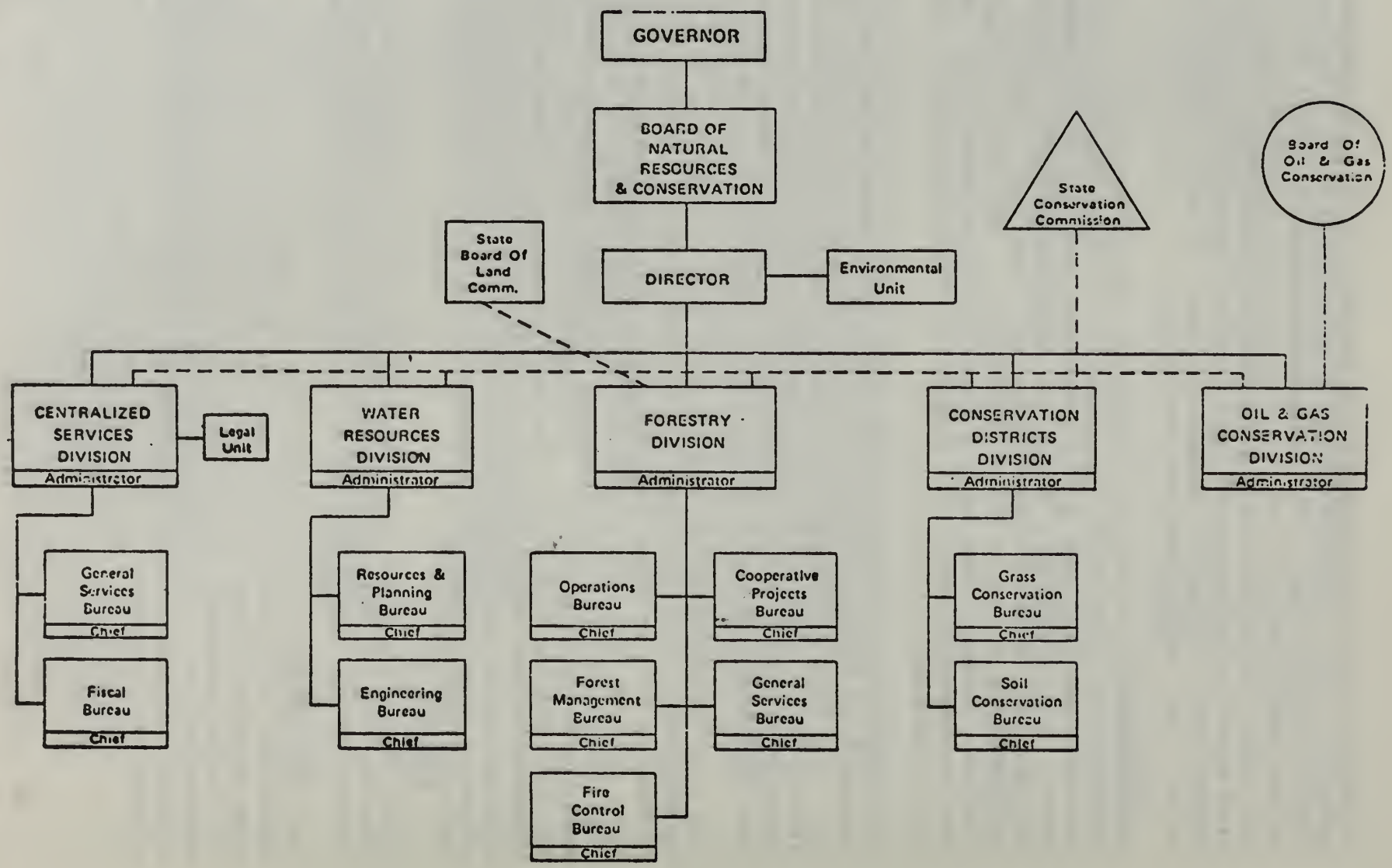

FIGURE 2

Department of Natural Resources and Conservation
Centralized Services and Water Resources Divisions
As of December, 1971

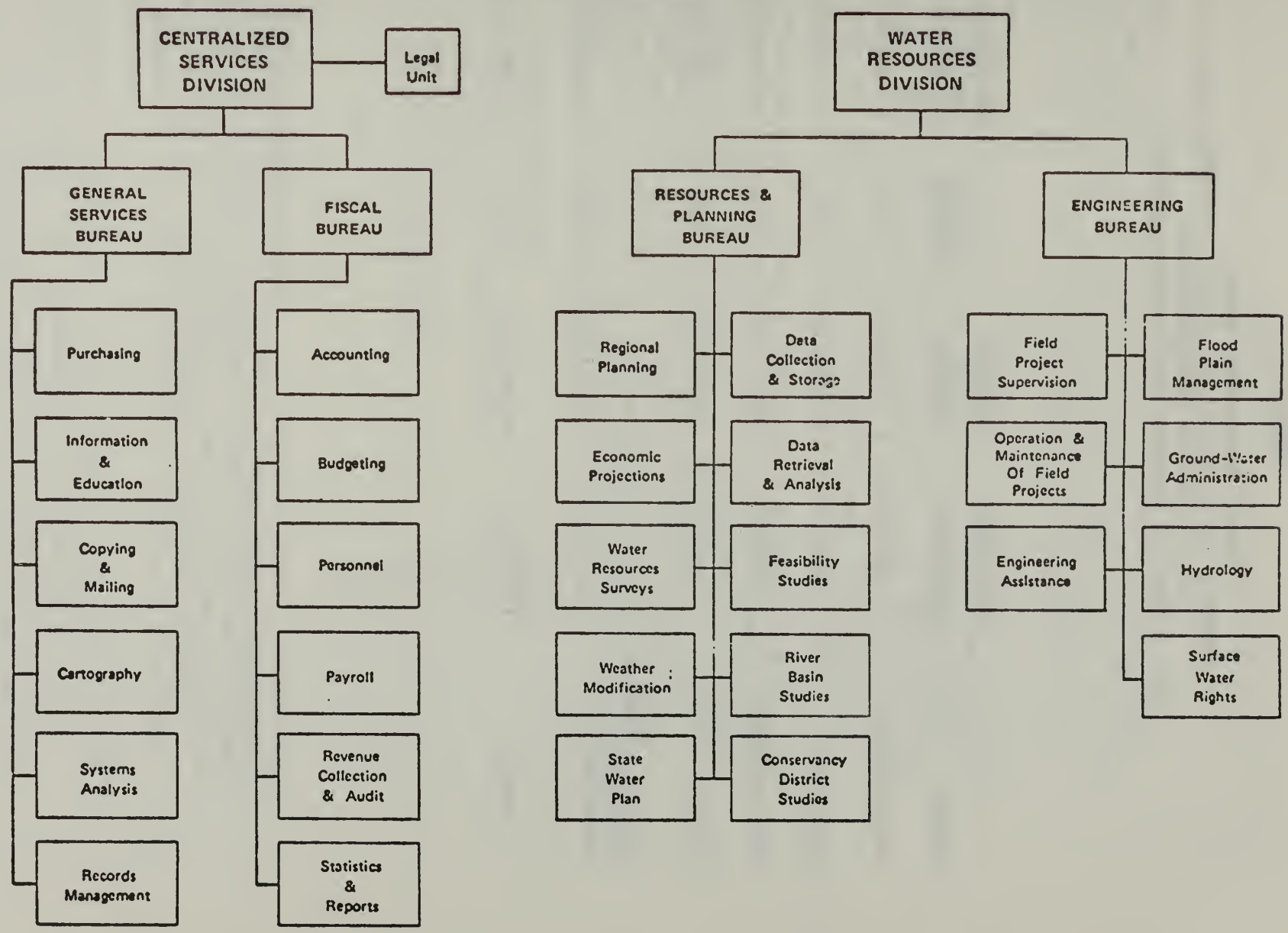

TABLE 2

Water Resources Board
Summary of Legislative Budget Action
1971 Biennial Expenditures,
1973 Biennial Request and Appropriations

Program	Expended 1971 Biennium	Requested 1973 Biennium	Biennial Increase	Appropriated 1973 Biennium	Biennial Increase
Administration	$ 359,635	$ 576,363	60%	$ 475,353	32%
Engineering	857,159	4,226,622	393%	930,100	9%
Water Resources	593,230	864,298	46%	525,000	(12%)
Planning	425,058	672,472	58%	468,340	10%
Council on Natural Resources & Development	43,725	151,720	247%	-0-	(100%)
TOTALS	$2,278,807	$6,491,475	185%	$2,398,793	5%

PROJECTS

HISTORY OF CONSTRUCTION AND FINANCING

An estimate of the state's investment in water conservation projects over the past thirty-six years can be made by combining data appearing in the 1961 "Kelly Report" and its 1965 supplement with the financial information developed by the Legislative Auditor in his 1971 report of examination.

The "Summary of Activities of the State Water Conservation Board," prepared by Robert J. Kelly, is a compilation of financial data on Water Conservation Board projects constructed between January 22, 1934 and June 30, 1960. A supplement to this report updates project information through June 30, 1965. Due to a lack of adequate records of project activity during this period, the Kelly report represents the only reliable source of historic project data available at the present time.

The term "projects," as used by the Water Resources Board and its predecessors, may refer to a number of agency activities ranging from a cursory inspection of a proposed conservation site to a sophisticated system of dams and canals. A master list of projects was prepared in 1938 and revised in 1964. This list shows 766 projects, listed by county location and project number. By comparing information contained in the Kelly report against the Master List of Projects, the following categorical breakdown may be made:

	Type of Project	Number
1.	Preliminary Investigations	134
2.	Surveys Only	194
3.	Projects Constructed	181
4.	Activity Unidentified	257
	Total	766

1. Preliminary Investigations. In studying water conservation possibilities in the state, the Water Conservation Board made their own investigations of project sites as well as studying sites proposed by Montana residents. Most of these preliminary investigations did not prove to warrant subsequent survey; however, memoranda on each investigation made were filed for future reference.

Records indicate that a total of $5,965.60 in State Water Conservation Board funds were expended in the conduct of 134 project investigations, or an average of $44.50 per project. As a rule, these expenditures represented mileage and per diem expenses of Water Conservation Board personnel, and were subsequently charged off as administrative costs.

2. Project Surveys. This group of projects represents site investigations which justified more study than possible through preliminary investigation. The depth of study on each survey was not evidenced on accounting records except as to total costs incurred. Survey costs on individual projects ranged from a low of $23.53 for the Wheatcroft project to a high of $22,402.58 on the Hillside Pumping project in Yellowstone County. The average state cost incurred on the 194 surveys conducted was $2,275. Actual costs were as follows:

State costs for 194 project surveys		$ 441,417
Survey costs repaid by project residents	$ 69,387	
Survey costs charged off as uncollectible	$ 372,030	
		$ 441,417

3. Projects Constructed. During the period 1934 through 1970, the State Water Conservation Board participated in the construction of 181 water conservation projects. Of this total, 164 were funded to some degree by state funds (Exhibit 2). Presently, only 35 projects are considered as active by the Water Resources Board. The projects were built to furnish a water supply for 405,582 acres of land. Also, 23.6 miles of pipeline for domestic water supply and 24.36 miles of transmission lines for pumping projects were constructed.

Prior to 1960, project construction costs were commingled with maintenance and other expenses, making exact costs of construction difficult to ascertain. Available information shows the following to be the source of financing for the 181 projects:

Revenue Bond Proceeds	$ 4,398,500
Cash Grants	3,569,477
Other Grants	3,454,711
State Appropriations	11,306,448
Total	$ 22,729,136

The state appropriation figure includes $1,248,545 expended in operating the Daly Ditch project. The Daly Ditch project is unique in that it is the only project developed by private enterprise and subsequently taken over in its entirety by the Water Conservation Board. The project was acquired at no cost to the state in 1942, and in 1951 was substantially renovated using Board funds. Both construction and maintenance costs incurred by the state have been charged to the project annually such charges being prorated to individual users based on the amount of water contracted for. The Council feels that on all projects, including the Daly Ditch operation, capital outlay expenditures should be treated differently than are maintenance outlays. Any operation or maintenance advances made by the

state should be repaid in the subsequent operating year; however, capital expenditures should be set up on open-ended repayment contracts to be amortized over a period agreed upon between the state and the respective user association.

In 1950, the Reconstruction Finance Corporation, which held seventeen project bond issues, was forced to liquidate its holdings. The seventeen projects which had been financed through revenue bond sales were, at that time, analyzed to determine how much revenue could be realistically expected to be available for debt retirement. Based on this information, a purchase price of $1,534,882 was arrived at for redemption of the seventeen issues from the Reconstruction Finance Corporation. The 1951 Legislative Assembly appropriated $1,450,000 from the State General Fund to be used with available Water Conservation Board funds to purchase the bonds. Consequently, the state was able to retire $3,926,835 in outstanding revenue bonds plus $918,474 in accured interest for an investment of $1,534,882.

Exhibit 2 shows the operation of project construction accounts between 1934 and 1965. The amount shown as State Water Conservation Board funds invested includes the Water Conservation Board's allocation of the $1,534,882 paid to redeem revenue bonds in 1951. The Water Conservation Board allocated this cost to benefiting projects on the basis of each project's ability to repay. The Legislative Auditor, on the other hand, has suggested that a more proper allocation would have been on a ratio of each project's outstanding indebtedness at the time of purchase to the total purchase price. A comparison of the two allocation methods and their effects on project costs is shown on Table 3 on the following page.

In summary, the total construction costs on 181 projects constructed by the Water Conservation Board were $22,729,136. Of this total, state funds amounting to $11,306,448 were expended, plus administration charges of $178,640 for a total state investment of $11,485,088 (Exhibit 2). Through June 30, 1970, the state could forecast potential recovery of $8,773,636, computed as follows:

Payments on water sale contracts through 6/30/70	$5,278,926
Repayment of administration charges through 6/30/70	11,589
Receivable on active water sale contracts 6/30/70	3,483,121
Total Potential Recovery	$8,773,636

The difference between investment and recovery of $2,711,452 represents original contracts which have been written off as uncollectible.

The primary means by which the state may recover its loss is through the sale of additional project water. Based on present water reserves and corresponding sales rates for each project,

TABLE 3

WATER RESOURCES BOARD
Effects of Board Allocation of
1951 Revenue Bond Purchase

Project	Allocation Based Upon: Ability To Pay	Allocation Based Upon: Ratio of Outstanding Debt	Project Costs Overstated (Understated)
Broadwater Missouri	$ 420,000	$ 184,186	$ 235,814
Tongue River	195,000	245,581	(50,581)
Willow Creek	1	46,046	(46,045)
Rock Creek	260,000	230,232	29,768
Ruby River	176,000	107,442	68,558
North Fork Smith River	130,000	30,698	99,302
Deadman's Basin	$ 876	$ 46,046	$(45,170)
Columbus	1	4,605	(4,604)
Nevada	1	46,046	(46,045)
Sidney	1	12,279	(12,278)
Flint Creek	1	107,442	(107,441)
Upper Musselshell	50,000	153,488	(103,488)
Park Branch	32,000	10,744	21,256
Livingston Ditch	10,000	3,070	6,930
West Fork Bitterroot	44,000	199,535	(155,535)
Ackley Lake	1	15,349	(15,348)
Middle Creek	217,000	92,093	124,907
Total	$1,534,882	$1,534,882	$ -0-

a potential $5,600,611 could be realized through additional water sales (Exhibit 3). A greater sum may be realized if water sale rates are adjusted upwards to reflect the market value of the product. This has been done on recent Tongue River project water sales in response to the heavy industrial demand for water in the project area. The Council does not expect that rates can be adjusted on existing water marketing contracts, as the state is bound to the original terms of such contracts.

In summary, the Council makes the following recommendations in the hopes that more reliable information may be obtained on each active conservation project which will enable the legislature and the administering agency to make viable financing decisions in the future:

The Legislative Council recommends that a critique be formulated for each active project and also those inactive projects in which title to land is vested with the Water Resources Division. Such critiques should include:

(a) Total state investment in the original construction of the project.

(b) Total state investment recovered to date through sale of water and value of unsold water reserves.

(c) Historical listing of state expenditures for project operation and maintenance and related repayment to date.

(d) Description of state-owned real or personal property attached to the project, including water rights, if any.

(e) A multi-use economic analysis to determine the viability of the state's interest in each project.

The Legislative Council recommends that water marketing and water purchase contracts be revised so as to allow flexibility in future rate-setting procedures.

The Legislative Council recommends that, coincidental with individual project critiques, the Water Resources Division give immediate consideration to installation of adequate measuring devices where needed.

The Legislative Council recommends that the costs of installing measuring devices, net of any federal assistance, be borne by the project if such installation is for the primary benefit of the project.

The Legislative Council recommends that the Board of

Natural Resources set up capital accounts for each project that are open-end in nature evidenced by a promissory note and to be set on reasonable payments based on the associations' ability to repay.

The Legislative Council recommends that for any capital improvements on projects for which bids must be let, if the bid of the lowest responsible bidder exceeds the project engineer's original estimate by more than 5%, the approval of the project user association be obtained before any bid is accepted.

PROJECT OPERATION AND MAINTENANCE

The Legislative Auditor's examination of water projects revealed that many projects were not being operated in the self-sustaining manner required by law. Exhibit 4 shows the extent to which the state has incurred operation and maintenance expenses over the ten-year period 1960 - 1970. During this period, a total of $1,623,267 in state funds was expended to operate and maintain various projects. Of this amount, repayment agreements were made in the amount of $889,520. The difference of $733,747 represents the state's subsidy of project operations for which no repayment need be made. In response to a recommendation by the Legislative Auditor, the Water Resources Board has agreed that all future state expenditures for this purpose will be supported by formal repayment agreements, and interest will be charged on all unpaid balances due the state.

The Legislative Auditor's visits to selected project sites also disclosed that many projects were not being kept in proper repair. For example, one canal at the Flint Creek project was found to be leaking to the extent that water from the canal was flooding private property. In their discussions with officials at various projects, the Auditor's staff found that, in some cases, a lack of adequate repairs is limiting the capacity of water delivery systems. Consequently, the state is not only paying expenses on projects which should be self-sustaining, but is also failing to realize the full potential of other projects.

Following the report of the Legislative Auditor, Water Resources Board engineering personnel surveyed twenty-nine project user associations regarding the creation of a contingency fund to cover the expense of needed repairs. The purpose of the contingency fund is to accumulate funds over a five-year period in an amount equal to one year's total operation expenses. Figure 3 shows the effects of the contingency charge on each project contacted, along with comments as to the adequacy of the O & M assessments then in effect.

Section 89-111(3)(d), R.C.M. 1947, empowers the Board to fix and establish prices, rates and charges for water and other

FIGURE 3

PROJECT O & M ASSESSMENTS, 1971 AND 1972

PROJECT	1971 O&M	1972 O&M	INCREASE	COMMENTS ON CONTINGENCY FUND
Frenchman	.25	.25		Has adequate fund.
Delphia Melstone	2.75	3.25	.50	Still too low, but all they can afford.
Tongue River	.32	.32		Should be adequate to start fund with new sales.
Deadman's Basin	.50	.60	.10	Will start fund.
Nevada Creek	.95	.95		Has adequate fund.
Willow Creek	.20	.20		Users oppose fund.
Columbus	2.05	2.05		Adequate to start fund. Lower expenses due to siphon.
Middle Creek	.47	.47		Has adequate fund.
Nilan	.50	.60	.10	Will start fund.
Nilan-Florence Canal	.75	.90	.15	Will start fund.
Livingston	3.45	3.45		Has a small fund. Suggested they raise O&M next year.
Broadwater-Missouri	.76	.91	.15	Will start fund.
Rock Creek	.15	.15		Have small fund. Will increase O&M 5¢ next year.
Ackley Lake	1.00	1.00		Have no fund. Suggested they raise O&M 20% next year. Well run project.
Ruby River	.24	.24		Has adequate fund started.
Vigilante Canal	.70	.70		Plan to have extra for fund this year.
West Bench Canal	.55	.60	.05	Will start fund.
Upper Musselshell	.90	.90		Suggested they raise O&M to start fund.
Smith River	.10	.10		Users oppose fund.
South Side Canal	.30	.30		Users oppose fund.
Sidney	2.10	2.10		
Park Branch	.80	.80		No fund. Suggested they raise O&M 20% next year.
Paradise	1.25	1.25		Users oppose fund
Daly Ditches	4.00	4.35	.35	No fund. Increased O&M costs.
Yellowater	AS NEEDED			
Fred Burr	AS NEEDED			
Petrolia	2.38	2.38		Needs fund.
Hysham	7.50	7.50		Suggested they raise O&M to start fund.
Flint Creek	1.00	1.25	.25	Had fund, but lost in damage suit. Will rebuild fund.

services at a level which will provide sufficient revenue to pay the expenses of operation, maintenance, and repair of the projects, as well as creating a reserve to meet contingencies with respect to the project. Section 89-115, R.C.M. 1947, makes it ". . . the duty of the board to enter into such contracts and fix and establish such prices, rates, and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance . . . together with necessary repairs . . . ." The Council feels the legislative intent that projects be self-sustaining is clear in the above statutes. Not only should state advances for repairs be repaid in full, but the annual user association budgets should be prepared realistically in light of anticipated needs for repair and project upkeep.

The Legislative Council recommends that the engineering bureau of the Water Resources Division conduct periodic inspections of each active project and report on the adequacy of system maintenance. Such inspections should include verification of distribution reports and servicing of measurement devices.

It further recommends that, in conjunction with the implementation of the statewide budgeting and accounting system, the Central Services Division of the Department of Natural Resources and Conservation develop a system of cost accounting which would allocate all overhead or indirect project costs to individual project accounts. Such indirect costs would include, but would not be limited to, all administrative, engineering and bookkeeping expenses which were attributable either in whole or in part to the Department's involvement in project operations.

It further recommends that each water user association be furnished an annual statement of all direct and indirect costs incurred by the Department of Natural Resources and Conservation and allocated to such project during the preceding budget year.

It further recommends that the repayment of all direct and indirect O & M costs incurred by the state be included in the project operation and maintenance budget for the ensuing year.

LEGAL STATUS OF PROJECTS

During the period in which Water Conservation Board projects were surveyed and constructed, the state acquired interest in real property located around project sites. This interest was in the form of easements, rights-of-way, and actual title to lands. Due to a lack of coordination between the Board's engineering and accounting departments, documents showing the state's interest in project lands have not been kept in a manner

which allowed periodic review by either the Water Conservation Board or the Water Resources Board. The Council feels that immediate steps should be taken to correct this situation for two reasons:

1. Under the new Montana Constitution, the state is no longer immune from suit for damages incurred on state-owned property.

2. Without an accurate inventory of property interests on each active and inactive project, the state cannot legally divest itself of projects which are no longer of value.

The new Montana Constitution will have a direct bearing on the liability of the state for accidents occurring on water projects. The previous Doctrine of Sovereign Immunity protected the state from suit when it performed functions not proprietary in nature. Only when the state engages in operations from which a profit is derived does it divest itself of its sovereign character and impliedly consent to suits for damage.

Because of the uncertain scope and depth of liability created by the adoption of Article II, Section 18, of the Montana Constitution of 1972 which states that "The state, counties, cities, towns and all other local governmental entities shall have no immunity from suit for injury to a person or property . . .", when considered in light of the fact that the state of Montana is one of the largest property owners in the state:

The Legislative Council recommends that a constitutional amendment be proposed to the 43rd Montana Legislative Assembly deleting Article II, Section 18 of the Montana Constitution of 1972.

As a result of the new constitutional provisions, the Council feels that the state should make every effort to divest itself of any interest in non-functioning projects, or should improve these projects to lessen the possibility of injury and subsequent tort claim. Consideration should also be given to providing some type of self insurance on active projects retained by the state.

When comprehensive studies of all water projects presently under the state's control have been made, a decision will be made as to the merits of retaining or disposing of a particular project. The Legislative Auditor has recommended that following a critique of each project, the Water Resources Board (Board of Natural Resources and Conservation) should either (a) establish operation and maintenance charges which will reimburse the state for actual expenses, (b) turn the projects over to the water users and their associations, or (c) abandon the projects. Following is a discussion of the latter two alternatives and the feasibility of adopting one of them.

Turning the projects over to the water users (b) above. This alternative would be accomplished by either giving the projects to the water users or by selling the projects to the users.

The Auditor did not recommend turning the projects completely over to the users, as such action may not relieve the Board of the debt represented by state investment in the projects. This argument is based on Section 89-116.1, R.C.M. 1947, which provides that all sums received from the sale of water through water purchase contracts shall be deposited in the general fund to be applied on the retirement of the bonds. The purpose of the statute was to assure that the state would be repaid for the redemption from the federal government through sale of water in the projects. If the Board were to relinquish the projects to the water users, they would, in effect, be forgiving the debt owed on the repurchase of the bonds which, it was argued by the Auditor, would violate the constitutional restriction against forgiveness of debts by the state. (Article XIII, Section 2)

However, in the present situation, Section 89-116.1, R.C.M. 1947, does not make it mandatory that the debt be repaid. It simply states that "All sums received . . . shall be deposited in the general fund." Furthermore, Article XIII, Section 2, would not apply because Section 89-141 expressly provides that the obligations assumed under the act shall not be "obligations" of the state and are not, therefore, "debts" within the meaning of the constitutional restrictions on forgiveness of debts. (See State ex rel. Normile v. Cooney 100 M 391, 410, 47 p 2d 637.) It would appear, then, that Article XIII and Section 89-116.1 alone would not preclude the alternative of giving the projects to the users.

However, Section 35 of Article V provides that ". . . no appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state." The Water Conservation Act, itself, was attacked under that provision in State ex rel. Normile cited above. The Court held that the Act was not governed by the constitutional provision because the ultimate purpose in making the appropriation was a public one:

> The purpose of the appropriations above referred to is a public use. The Water Conservation Board is created by law. It is an agency of the state. It is under the absolute control of the state; hence the contention here made cannot prevail.

However, if the projects were turned over to the private water user associations, which are not under the direct control of the state, the appropriations made to maintain the projects would, in effect, be made in violation of Section 35. The Board would not be able to "give" the projects to the users.

Further, if any state lands were involved, the gift would be

prohibited by Article XVII, Section 1, of the constitution. Section 1 requires that no lands may be disposed of unless the full market value of the land or interest be paid to the state.

The other option under this alternative was to sell the projects to the respective users. Section 89-115 provides that the Board is empowered ". . . to sell or otherwise dispose of any rights of way, easements or property, when it shall determine that the same is no longer needed for the purposes of this act . . . ." It would appear from this section that the Board could sell, terminate services provided by the project or abandon the project if it is no longer needed for the purposes of the act.

Inasmuch as many of the projects are not self-sustaining and consistently need funding over and above the operation and maintenance charges, it is unlikely that the state could get a reasonable value from a sale of the projects. However, if the projects were sold at a public auction, the price received from the highest bidder would probably satisfy the "full market value" requirement of Article XVII of the constitution.

If the state were not able to sell the projects, it could terminate the users agreement, shut the headgates, dry up the ditches and possibly reclaim the land. In that event, the land board would then be responsible for leasing the land for purposes other than providing water to water user associations. This might also tend to encourage the water users to purchase the projects before the state terminated the use of the project. Further, this latter activity would render the project harmless and reduce the possibility of an accident occurring which would render the state liable for damages.

Abandonment (c) above. This alternative runs, again, into Article XVII, Section 1, requiring that full market value be paid to the state. The state could "abandon" the project, but would still own the land and the fixtures. Therefore, the state, as landowners, would probably be liable for any damages resulting from a burst dam or canal.

Under the present statutory authority, if the Board intends to dispose of the property by abandonment or termination of user contracts, it must show that the project no longer is needed for the purposes of the Act. The stated purposes of the Act are to promote the conservation, development, storage, distribution and utilization of water. If the state were to abandon the projects it could be effectively argued by the association users that the Board was not fulfilling its duties under the act and it may be difficult or impossible to support the petition that the project was no longer needed for the purposes of the act.

In summary, the only legally acceptable way the Board could "turn over" the projects to the users is to make a sale of the project for an amount reasonably close to the state investment in the project or sell the project to the highest bidder at public auction. The audit report suggests that the associations did not

want responsibility for the projects because of the maintenance and repair problems. If this is true, it may be somewhat optimistic to presume that the Board could sell the projects to the user associations.

The Council feels that the state should be given the option of selling projects which have been proven to be of no value and which in fact represent a source of potential liability. After formulating critiques of individual projects, the agency board should have the express authority to terminate contracts, reclaim lands, and sell its interest to any property acquired in this manner.

The Legislative Council recommends that the Board of Natural Resources and Conservation be empowered to sell, transfer, abandon or otherwise dispose of any project rights-of-way, easements or other property when it determines that the same is no longer needed for any state purposes. Specific options which should be available to the Board would include, but would not be limited to:

(1) Retain title to the project.

(2) Release title to project through:

(a) Sale of project at public auction.

(b) Sale of project directly to authorized user association.

(3) Transfer of project title to State Department of Lands.

EXHIBIT 1

WATER RESOURCES BOARD
Summary of Departmental Expenditures
1960 - 1971

Fiscal Year	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	Anticipated 1971
No. of Full-Time Positions	65.4	49.4	40.40	34.70	43.36	40.29	40.45	47.74	63.05	70.72	66.28	75.00
Expenditures By Program												
Administration	$ 68,267	$ 71,949	$ 57,386	$ 58,130	$ 114,599	$ 118,656	$ 103,525	$ 114,401	$ 92,454	$ 78,778	$ 164,860	$ 194,775
Engineering	17,268	21,162	21,334	22,110	59,394	70,306	65,012	85,077	666,546	480,911	259,704	597,455
Field Projects	300,274	363,861	177,079	234,806	137,063	146,601	195,318	189,139				
Hydrography	21,525	34,152	40,192	38,702	17,370	23,982	68,968	79,116				
(1) Planning								19,468	94,003	211,935	224,058	201,000
(2) Rural Electrification	42,854	44,576	18,869	--								
(3) Water Resources Survey					92,882	94,854	78,365	96,869	211,378	285,953	292,287	300,943
Council on Natural Resources											13,022	30,703
River Basins Commission								3,180	52,151	54,418	35,425	40,000
Total Program	$ 450,188	$ 535,700	$ 314,860	$ 353,748	$ 421,308	$ 454,399	$ 511,188	$ 587,250	$1,116,532	$1,111,995	$ 989,356	$1,364,876
Expenditures by Object												
Personal Services	$ 100,522	$ 112,221	$ 109,182	$ 106,797	$ 248,343	$ 234,834	$ 238,594	$ 290,749	$ 411,974	$ 483,734	$ 500,190	$ 587,417
Operation	339,510	399,864	200,007	238,927	154,287	192,609	257,742	245,358	665,850	593,625	443,107	757,839
Capital Outlay	10,156	23,615	5,671	8,024	18,678	26,956	14,852	51,143	38,708	34,636	46,059	19,620
Total Object	$ 450,188	$ 535,700	$ 314,860	$ 353,748	$ 421,308	$ 454,399	$ 511,188	$ 587,250	$1,116,532	$1,111,995	$ 989,356	$1,364,876
Funding												
General Fund	$ 408,780	$ 507,740	$ 119,784	$ 173,467	$ 374,146	$ 450,005	$ 237,069	$ 281,062	$ 891,678	$ 931,168	$ 769,409	$1,130,973
Federal & Private Revenue									37,679	38,061	69,920	83,903
								26,901				
Revolving Fund	41,408	27,960										
Earmarked Revenue			195,076	180,281	47,162	4,394	274,119	279,287	187,175	142,766	150,027	150,000
Total Funding	$ 450,188	$ 535,700	$ 314,860	$ 353,748	$ 421,308	$ 454,399	$ 511,188	$ 587,250	$1,116,532	$1,111,995	$ 989,356	$1,364,876
Biennial Totals	$ 985,888		$ 668,608		$ 875,707		$ 1,098,438		$ 2,228,527		$ 2,354,232	

Source: Executive Budget Documents, 1961, 1963, 1965, 1967, 1969, 1971, 1973 Biennia.

EXHIBIT 2

OPERATION OF STATE WATER CONSERVATION BOARD
January, 1934 to June 30, 1970

Number	Project	SWCB Funds	Administration Charge	Repaid SWCB Funds	Repaid Administration	Uncollectable	June 30, 1970 Balance
21	Broadwater-Missouri	$ 661,743.93	$ 11,322.67	$ 508,213.80	$	$ 11,322.67	$ 153,530.13
27	East Fork of Poplar	12,652.79				12,652.79	
29	Tongue River	486,328.25	32,935.33	421,457.24		32,980.33	64,826.01
39	West Fork of Poplar	6,598.91				6,598.91	
43	Valentine	29,556.62		335.57		28,399.74	821.31
47	Willow Creek	93,271.46	6,539.49	87,987.08		6,539.49	5,284.38
52	Nickwall	1,209.23				1,209.23	
64	Red Lodge - Rock Creek	382,442.95	11,227.31	292,349.39		11,227.31	90,093.56
73	Nilan	415,150.66		57,133.11			358,017.55
78	Ruby River	310,818.06	14,775.66	239,986.80		14,790.66	70,816.26
82	North Fork Smith River	172,826.28	7,167.83	169,645.13		7,167.83	3,181.15
92	Deadman's Basin	471,750.79		226,764.95			244,985.84
98	Winnett	65,299.86		6,688.08		58,556.48	55.30
117	Bainville	21,417.23				21,417.23	
119	Green Mountain	26,217.98		2,367.98		23,850.00	
121	Columbus	84,107.11	2,323.87	44,225.22		2,323.87	39,881.89
126	Teton Cooperative	14,008.40		14,008.40			
129	Hysham	559,170.45		131,946.07			427,224.38
144	Big Horn-Tullock	37,538.06		38,614.22			(1,076.16)
161	Williams	609.64				609.64	
166	Yellowater	27,371.53		33,950.00			(6,578.47)
180	Vananda	71.17				71.17	
182	Nevada Creek	176,853.00	7,785.64	110,975.07		7,785.64	65,877.93
189	Hotchkiss	4,163.77				4,163.77	
207	Sidney	194,935.43	4,538.17	92,113.72		10,679.30	96,680.58
210	Flint Creek	393,103.07	16,470.74	223,918.50		25,658.81	159,996.50
214	Upper Musselshell	359,304.69	22,138.60	256,679.40		24,433.11	100,330.78
225	Park Branch	201,995.86	3,456.44	118,907.06		3,456.44	83,088.80
233	Livingston Ditch	74,248.71	1,032.97	39,793.49		1,032.97	34,455.22
244	Soda Creek	685.19		660.00		25.19	
245	Red Horse	4,130.69				4,130.69	
250	Red Butte	14,944.11		3,000.00		6,719.69	5,224.42
252	Camp Creek	1,500.02		1,500.02			
254	Lisk Creek	8,574.06				8,574.06	
255	Buffalo Hill	702.22		702.22			

EXHIBIT 2

OPERATION OF STATE WATER CONSERVATION BOARD
January, 1934 to June 30, 1970

Number	Project	SWCB Funds	Administration Charge	Repaid SWCB Funds	Repaid Administration	Uncollectable	June 30, 1970 Balance
257	West Fork Bitterroot	135,028.94	$13,825.99	$ 132,707.00	$	$ 13,825.99	$ 2,321.94
258	Conrad	454.57	4,379.46	454.57	4,379.46		
270	Big Dry	161,337.04		449.00		160,844.01	44.03
277	Ackley Lake	84,480.81	2,825.64	36,454.90		2,825.64	48,025.91
278	Wasson Flats	4,117.52				4,117.52	
279	Deer Creek	1,624.56		1,329.60		294.96	
281	Remely	1,105.06		750.00		355.06	
302	Charlo	23,409.17		35,077.76			(11,668.59)
319	Todd	379.43				379.43	
332	Larson	81.20				81.20	
333	Lone Tree	859.91				859.91	
386	Fred Burr	106,185.48		25,416.87		38,333.22	42,435.39
401	Hall	495.40				495.40	
404	Theboe Lake	9,163.88		8,164.89		934.22	64.77
407	Fillafer	496.82				496.82	
408	Rogers	395.31		188.19		207.12	
409	Nichols	347.56		173.78		173.78	
415	Kruger	360.89				360.89	
416	Powellek	351.20		150.00		201.20	
419	Noble	747.96		500.00		247.96	
422	Middle Creek	433,038.38	8,684.54	255,591.03		8,684.54	177,447.35
424	Jones	621.15				621.15	
425	Love	330.74				330.74	
426	Dayhoff	363.87		50.00		313.87	
428	Alexander	581.65	196.83	581.65	196.83		
429	Findlater	7,343.23		100.00		7,243.23	
437	Blyton	384.89	240.23	384.89	240.23		
438	Buckley	300.19	49.81	300.19	49.81		
439	Bushell	238.65				238.65	
440	Burgess	330.34	575.23	330.34	575.23		
441	Flasted	228.07				228.07	
444	Hogmire	277.70		277.70			
446	Howard	356.51		115.00		241.51	
447	Jesse	126.99				126.99	
448	Kalberg	295.74				295.74	
449	Logar	493.56	944.36	493.56	944.36		
450	Lund	11.20				11.20	

EXHIBIT 2

OPERATION OF STATE WATER CONSERVATION BOARD
January, 1934 to June 30, 1970

Number	Project	SWCB Funds	Administration Charges	Repaid SWCB Funds	Repaid Administration	Uncollectable	June 30, 1970 Balance
451	Nash	$ 155.98	$	$	$	$ 155.98	$
452	Olson	211.75	133.29	211.75	133.29		
453	Pierce	237.04				237.04	
454	Richey	233.06		233.06			
455	Smith	405.93		200.00		205.93	
456	Rumpf	57.70				57.70	
457	Benson	7.40				7.40	
458	Zempel	282.36	231.57	282.36	231.57		
460	Sigdestad	206.45	75.55	206.45	75.55		
464	Kuehne	142.89				142.89	
465	Krieder	126.12		100.00		26.12	
466	Fillenworth	199.04		117.00		82.04	
468	Fatsinger	344.33		344.33			
469	Burnside	224.81				224.81	
470	Armells Creek	707.02				707.02	
471	Billings	1,845.56		300.00		1,545.56	
472	Cusker	198.49				198.49	
473	Davis	188.84				188.84	
474	Eccles	278.02				278.02	
475	Eggebrecht	263.05		263.05			
476	Hagen	159.42				159.42	
477	Hanley	507.18	327.52	507.18	327.52		
479	McGlynn	918.65	1,081.35	918.65	1,081.35		
480	Miller	158.74	255.70	158.74	255.70		
481	Riley	378.87				378.87	
482	Lewistown Ditch	17,102.74		12,257.50			4,845.24
485	Abel	72.76		72.76			
488	Johnson	324.93		324.93			
489	Schock	173.99				173.99	
490	Steffan	293.63	106.37	293.63	106.37		
492	Straub	155.15	143.85	155.15	143.85		
493	Dahl	95.50				95.50	
494	Schillinger	211.07		35.00		176.07	
495	Switzer	201.01	91.75	201.01	91.75		
496	Voss	147.67	238.33	147.67	238.33		
501	Serruys	153.36				153.36	

EXHIBIT 2

OPERATION OF STATE WATER CONSERVATION BOARD
January, 1934 to June 30, 1970

Number	Project	SWCB Funds	Administration Charges	Repaid SWCB Funds	Repaid Administration	Uncollectable	June 30, 1970 Balance
505	Ruffato	$ 238.42	$	$	$	$ 238.42	$
506	Thomas	14.06				14.06	
512	Sweetzer	564.10				564.10	
514	Wold	437.74	723.86	437.74	723.86		
515	Fleming	316.87		15.00		301.87	
516	O'Brien	159.89				159.89	
517	Seley	48.44				48.44	
518	Golden	242.45				242.45	
519	Williams	442.02				442.02	
520	Anderson	229.97	355.34	229.97	355.34		
523	Thielen	111.43				111.43	
524	Western	108.09				108.09	
531	Wilson	63.73				63.73	
532	Nielson	334.21				334.21	
536	South Side Canal	63,399.79		9,390.00		9,953.73	44,056.06
543	Hughes	164.77				164.77	
545	Bradshaw	2,196.62				2,196.62	
546	Efta	140.92	141.27	140.92	141.27		
547	Fletcher	334.80	339.20	334.80	339.20		
548	Larson	175.44	224.56	175.44	224.56		
550	Richardson	838.30	461.96	838.30	461.96		
551	Reder	261.16		261.16			
552	Vincellette	291.49				291.49	
556	Cowee	465.40				465.40	
557	Dovan	1,640.72		200.00		1,440.72	
560	Knight	267.90		150.00		117.90	
563	Sehm	708.24		708.24			
564	Neiser	1,844.86				1,844.86	
574	Bischoff	243.04	41.24	243.04	41.24		
576	Klock Ditch	109.83				109.83	
577	North Winifred	442.10				442 10	
578	Fadness	1,380.51				1,380.51	
584	Sinclair	326.11				326.11	
588	Jensen	134.98				134.98	
591	Stobe	162.34				162.34	
595	Johnson	133.02	229.16	133.02	229.16		

EXHIBIT 2

OPERATION OF STATE WATER CONSERVATION BOARD
January, 1934 to June 30, 1970

Number	Project	SWCB Funds	Administration Charges	Repaid SWCB Funds	Repaid Administration	Uncollectable	June 30, 1970 Balance
599	McDowell	$ 174.83	$	$ 66.58	$	$ 108.25	$
600	Francis	142.16		77.72		64.44	
613	McDougal	11.15				11.15	
618	Noxon	1,088.06	1.73	1,088.06	1.73		
625E	Vigilante	373,408.57		91,035.10			282,373.47
625W	West Bench	118,690.67		57,475.50			61,215.17
649	North Side Canal	134,010.39		1,775.00			132,235.39
653	Lower Musselshell	1,160,202.37		63,809.00			1,096,393.37
657	Highwood	8,632.50		8,632.50			
663N	Daly Ditches	1,248,545.05		1,013,253.10		96,637.67	138,654.28
676	Petrolia	515,498.47		78,850.58			436,647.89
683N	Helena	79,417.56		79,417.56			
683S	Helena	28,973.15		28,903.93		69.22	
696	Brady	878.14		878.14			
703	Cottonwood	126,653.24		70,720.15		564.55	55,368.54
714	Frenchman	320,037.87		59,236.82		106,531.57	154,269.48
716	Loma	1,511.30		1,511.30			
732	Florence	187,066.54		6,008.25			181,058.29
734	Paradise	356,378.59		61,635.00		21,973.51	272,770.08
740	Cataract	246,735.64					246,735.64
	Total	$11,306,448.27	$178,640.41	$5,278,925.58	$11,589.52	$832,562.52	$5,362,011.06

EXHIBIT 3

POTENTIAL VALUE OF WATER RESOURCES BOARD PROJECTS
(acre feet, miner's inches*, acres**)

Project	Firm Annual Yield	Contracted Amount	Available For Sale	Value of Unsold Amount [1]
Rock Creek	31,500	17,200	14,300	$ 557,700
Willow Creek	12,000	8,663	3,337	72,580
Flint Creek	16,040	14,745	1,295	51,800
Livingston Ditch	2,600*	2,374*	226*	6,780
Ruby River	38,850	24,715	14,135	237,468
Ackley Lake	5,266	2,436	2,830	67,920
Nevada Creek	10,500	6,060	4,440	135,198
Upper Musselshell	30,000	15,121	14,879	474,640
Sidney	15,000	9,675	5,325	86,265
West Fork Bitterroot	30,000	6,000	24,000	980,200
Broadwater-Missouri	42,000	27,310	14,690	401,037
Middle Creek	8,027	7,803	224	13,200
Deadman's Basin	30,000	20,386	9,614	237,946
Vigilante Canal	15,000	12,440	2,560	51,200
West Bench	9,000	8,175	825	13,612
Hysham Pumping	7,600**	5,574**	2,026**	162,080
Delphia-Melstone	16,300**	3,957**	12,343**	1,297,325
Petrolia	5,300	2,989	2,311	231,100
Nilan	10,000	3,573	6,427	321,350
Florence Canal	8,000	1,640	6,360	104,940
Frenchman Creek	7,000	6,450	550	16,500
Paradise	3,000	2,955	45	4,770
North Side Canal	5,000	0	5,000	75,000
Totals	331,483	198,336	133,147	
	2,600*	2,374*	226*	$ 5,600,611
	23,900**	9,531**	14,369**	

[1] Based on prevailing water marketing rates on June 30, 1971.

EXHIBIT 4

WATER RESOURCES BOARD
STATUS OF PROJECT OPERATION AND MAINTENANCE EXPENSES INCURRED BY THE STATE
July 1, 1960 through June 30, 1970*

Projects	OPERATION AND MAINTENANCE EXPENSES INCURRED BY STATE 1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	Total O & M Expenses*	Revenue Received To 6/30/70	Revenue Receivable On 6/30/70	Revenue Received and To Be Received	State Expenses Over Recovered*	State Expenses Will Not Be Recovered
BONDED PROJECTS																
1. Broadwater-Missouri	$ 1,478	$ 1,793	$ 19,141	$ 1,371	$ 1,334	$ 2,360	$ 2,170	$ 31,444	$ 6,416	$ 1,712	$ 69,217	$ 28,857	$ 20,606	$ 49,464	$ -0-	$ 19,753
2. Tongue River	2,766	20,007	3,170	9,002	13,709	101,373	22,384	7,167	2,001	920	182,479	4,764	-0-	4,764	-0-	177,715
3. Willow Creek	2	6	2	2	3,456	874	663	2	2	200	5,209	-0-	-0-	-0-	-0-	5,209
4. Rock Creek	3,973	612	1,814	1,950	255	1,119	582	64	2,529	1,528	14,426	-0-	-0-	-0-	-0-	14,426
5. Kootenai River	2,231	785	2,410	722	891	2,629	512	127	182	1	10,490	2,219	-0-	2,219	-0-	8,271
6. North Fork Smith River	4	22	1	76	1,098	571	289	893	79	1	3,034	-0-	-0-	-0-	-0-	3,034
7. Deadman's Basin	20,816	3,964	3,712	13,995	7,468	78	17,498	2,670	436	1,835	72,522	23,706	5,265	28,971	-0-	43,551
8. Colorado	4,111	874	1,580	834	1,042	1,144	403	709	2,309	2,106	15,112	3,737	-0-	3,737	-0-	11,375
9. Nevada Creek	5,484	6,131	2,807	14,706	100	2,221	9,737	2,028	7,530	83	51,829	7,241	1,810	9,051	-0-	42,778
10. Sidney	13,968	326	15,263	8,938	286	447	9,890	11,171	2,238	5	62,532	12,350	10,650	23,000	-0-	39,532
11. Flat Creek	23,313	1,130	1,832	2,894	1,368	449	893	60	115	2	32,056	9,240	2,310	11,550	-0-	20,506
12. Upper Musselshell	24,409	14,335	23,017	8,680	2,633	48,272	2,114	17,773	302	1,275	142,606	30,170	-0-	30,170	-0-	112,636
13. Pair Branch	428	4,801	911	2,248	7,798	2	216	200	32	203	16,839	19,399	-0-	19,399	2,560	-0-
14. Livingston Ditch	3,923	269	382	2,874	3,563	497	202	5,933	20	86	17,769	28,351	19	28,369	10,600	-0-
15. West Fork Bitterroot	168	275	1,262	32	212	84	859	3,052	48	16	6,008	4,500	5,500	10,000	3,992	-0-
16. Ackley Lake	5	8,197	1,025	579	7,386	2,262	367	2,200	61	6,626	28,708	6,768	8,772	15,540	-0-	13,168
17. Middle Creek	364	935	79	9	52	1	902	471	1	1	2,815	-0-	-0-	-0-	-0-	2,815
TOTAL - BONDED PROJECTS	$108,439	$ 64,482	$ 78,408	$ 68,912	$ 52,651	$164,383	$ 69,681	$ 85,964	$ 24,301	$ 16,620	$ 733,851	$181,302	$ 54,932	$236,234	$ 17,152	$514,769

* See notes on last page of this Appendix

Projects	OPERATION AND MAINTENANCE EXPENSES INCURRED BY STATE 1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	Total O & M Expenses*	Revenue Received To 6/30/70	Revenue Receivable On 6/30/70	Revenue Received and To Be Received	State Expenses Over Recovered*	State Expenses Will Not Be Recovered
OTHER ACTIVE PROJECTS																
1. Nilar	$ 261	$ 1,073	$ 1,383	$ 504	$ 2,362	$ 180	$ 461	$ 3,102	$ 57	$ 2	$ 9,385	$ -0-	$ -0-	$ -0-	$ -0-	$ 9,385
2. Bushman	10,753	816	612	1,293	677	1,381	45,975	1,023	6,416	4	68,950	16,922	43,280	60,202	-0-	8,748
3. Bighorn Tullock	3	-0-	1	-0-	1	-0-	1	1	-0-	-0-	7	-0-	-0-	-0-	-0-	7
4. Yellowater	2	-0-	1	1	65	1	1	2	1	203	277	-0-	-0-	-0-	-0-	277
5. Red Butte	-0-	-0-	-0-	-0-	24	1	1	1	-0-	-0-	27	-0-	-0-	-0-	-0-	27
6. Charl	99	-0-	193	612	2,059	760	-0-	-0-	-0-	-0-	3,723	-0-	-0-	-0-	-0-	3,723
7. Fred Burr	773	120	1,050	205	97	205	157	181	157	122	3,067	-0-	-0-	-0-	-0-	3,067
8. Lewistown Ditch	5	7	7	6	5	5	5	5	1	1	47	-0-	-0-	-0-	-0-	47
9. South Side Canal	1,626	934	18,472	8	1,032	3	-0-	-0-	4	-0-	22,079	6,457	4,129	10,586	-0-	11,493
0. Vigilante	5,963	65	369	430	192	25	-0-	-0-	-0-	84	7,128	3,403	-0-	3,403	-0-	3,725
1. Westbench	212	24	96	427	192	-0-	-0-	4,000	-0-	139	5,090	3,000	1,000	4,000	-0-	1,090
2. Nevada Creek	9,638	2,605	950	-0-	-0-	873	-0-	-0-	-0-	22	14,088	-0-	-0-	-0-	-0-	14,088
3. Musselshell Canal	12,795	18,702	41,563	25,152	33,485	16,177	7,221	1,759	1,917	270	159,041	4,000	7,500	11,500	-0-	147,541
4. Petrolia	5,111	89	8,780	3	9,043	38	925	24,694	47,020	125	95,818	13,918	49,147	63,065	-0-	32,753
5. Cottonwood	4	-0-	1	31	49	-0-	-0-	1	1	-0-	87	-0-	-0-	-0-	-0-	87
6. Frenchman	48	-0-	1	1	335	1	72	328	-0-	2	788	-0-	-0-	-0-	-0-	788
7. Florence	3,703	8,107	652	3,897	9,112	-0-	16	3,905	-0-	255	29,647	1,200	1,925	3,125	-0-	26,522
8. Paradise	705	352	666	312	3,830	3	270	234	47	1	5,900	2,449	-0-	2,449	-0-	3,451
TOTAL - OTHER ACTIVE PROJECTS	$ 51,201	$ 32,904	$ 74,797	$ 32,882	$ 62,530	$ 19,653	$ 55,105	$ 39,226	$ 55,621	$ 1,230	$ 425,149	$ 51,349	$106,981	$158,330	$ -0-	$266,819

See notes on last page of this Appendix

(Page 2 of Exhibit 4)

Projects	OPERATION AND MAINTENANCE EXPENSES INCURRED BY STATE 1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	Total O & M Expenses	Revenue Received To 6/30/70	Revenue Receivable On 6/30/70	Revenue Received and To Be Received	State Expenses Over Recovered	State Expenses Will Not Be Recovered
DALY DITCH PROJECT	$ 78,183	$ 34,690	$ 38,165	$ 50,380	$ 33,874	$ 41,091	$ 30,068	$ 32,571	$ 33,056	$ 38,464	$ 410,542	$494,956	$ -0-	$494,956	$ 84,415	$ -0-
INACTIVE/OPERATIONAL PROJECTS																
1. Valentine	$ 257	$ 40	$ 406	$ 82	$ 294	$ 194	$ 3	$ 1	$ 1	$ 1	$ 1,279	$ -0-	$ -0-	$ -0-	$ -0-	$ 1,279
2. Vinnett	69	-0-	-0-	-0-	55	1	1	1	-0-	711	838	-0-	-0-	-0-	-0-	838
3. Green Mountain	2	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	2	-0-	-0-	-0-	-0-	2
4. Notchkiss	1,425	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	1,425	-0-	-0-	-0-	-0-	1,425
5. Big Dry	-0-	13	13	13	18	13	14	14	14	-0-	112	-0-	-0-	-0-	-0-	112
6. Thebo Lake	-0-	-0-	-0-	-0-	65	-0-	-0-	-0-	-0-	-0-	65	-0-	-0-	-0-	-0-	65
7. Cataract	31,121	5,931	1,300	5,128	6,297	221	2	2	-0-	2	50,004	-0-	-0-	-0-	-0-	50,004
TOTAL - INACTIVE/OPERATIONAL PROJECTS	$ 32,874	$ 5,984	$ 1,719	$ 5,223	$ 6,729	$ 429	$ 20	$ 18	$ 15	$ 714	$ 53,725	$ -0-	$ -0-	$ -0-	$ -0-	$ 53,725
RECAP OF ALL PROJECTS																
17 BONDED PROJECTS	$108,439	$ 64,482	$ 78,408	$ 68,912	$ 52,651	$164,383	$ 69,681	$ 85,964	$ 24,301	$ 16,630	$ 733,851	$181,302	$ 54,932	$236,234	$ 17,152	$514,769
18 OTHER ACTIVE PROJECTS	51,201	32,904	74,797	32,882	62,530	19,653	55,105	39,226	55,621	1,230	425,149	51,349	106,981	158,330	-0-	266,819
1 DALY DITCH PROJECT	78,183	34,690	38,165	50,380	33,874	41,091	30,068	32,571	33,056	38,464	410,542	494,956	-0-	494,956	84,414	-0-
7 INACTIVE/OPERATIONAL PROJECTS	32,874	5,984	1,719	5,223	6,729	429	20	18	15	714	53,725	-0-	-0-	-0-	-0-	53,725
43 TOTAL	$270,697	$138,060	$193,089	$157,397	$155,784	$225,556	$154,874	$157,779	$112,993	$ 57,038	$1,623,267	$727,607	$161,913	$889,520	$101,566	$835,313

Source: All data extracted from board records and reports. Schedule reflects only O & M expenses incurred by the state for the 10-year period, 7/1/60 through 6/30/70. O & M expenses prior to 1960 are included as costs of construction on Appendix I.

Note: (a) Schedule does not include expenses of $159,259 incurred by board for 42 surveys and investigations for potential projects.
(b) State expenses appear to be over-recovered in some instances because of the manner in which expenses were recorded. See report narrative for further explanation.

(Page 3 of Exhibit 4)

EXHIBIT 5

PROPOSED PROJECT CRITIQUE FORMAT

WORK TASK SCHEDULE

PHASE I: Information Inventory

Tasks
1. Review past operation, maintenance and repair accomplishments
2. Review inspection reports
3. Initial investigation of problems identified

FIRST CHECK: Finalize Study Plan, file report prepared.

PHASE II: Project Inventory (Mapping and Field Investigations)

Tasks
1. Map and analyse distribution system
2. Rate life and capacity of existing structures
3. Identify needs (structural and physical system)
4. Identify other potential uses of project land and water

PHASE III: Land Use

Tasks
1. Soil mapping
2. Acres irrigated and irrigable
3. Crop water requirements

SECOND CHECK: Assess the potential for management and development of project area.

PHASE IV: Detailed Study of Alternative Rehabilitation Plans

Tasks
1. Consider alternative system components
2. Preliminary cost estimates

PHASE V: Economic Investigations

THIRD CHECK: Project Formulation

PHASE VI: Critique Report

TENTATIVE INVESTIGATION PLAN

I. Resource Inventory
   A. Water Supply
   B. Soil Resources
   C. Environmental Resources
   D. Human Resources
   E. Present Land Use
   F. Local Economy - Descriptive
   G.

II. Potentials for Management and Development
   A. Irrigation
   B. Flood Control
   C. Recreation
   D. Municipal and Industrial
   E. Environmental
   F.

III. Engineering Investigations
   A. Existing System
      1. Description
      2. Problems
   B. Develop Alternative Plans--With Other Team Members
   C. Design Work for Alternatives
   D. Cost Estimates for Various Alternatives

IV. Economic Investigations
   A. Benefit/Cost Analysis
   B. Cost Sharing and Cost Allocation
   C. Potential Financing
   D. Financial History
   E.

V. Environmental Investigations
   A. With/Without Analysis for Each Alternative

APPENDIX A

_____ BILL NO. _____

INTRODUCED BY _____

89-3404

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 89-3404, R.C.M. 1947, TO REQUIRE A PETITION SIGNED BY TEN PERCENT (10%) OF THE VOTERS IN A WATER CONSERVANCY DISTRICT BEFORE A PRELIMINARY SURVEY IS INITIATED."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 89-3404, R.C.M. 1947, is amended to read as follows:

"89-3404. Preliminary survey--written request. (1) To request a preliminary survey for a proposed conservancy district, the applicants shall present a written ~~request~~ petition to the water board.

(2) The ~~request~~ petition shall:

(a) be signed by ten percent (10%) of the registered voters residing within the boundaries of the proposed conservancy district;

~~(a)~~(b) generally describe the proposed boundaries of the district;

~~(b)~~(c) specify the purpose or purposes of the district;

~~(c)~~(d) list the works contemplated~~.~~;

(e) request that a preliminary survey be initiated.

(3) The water board may initiate a preliminary survey without any prior ~~request~~ written petition."

APPENDIX B

_____ BILL NO. _____

INTRODUCED BY _____

89-3411

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 89-3411, R.C.M. 1947, TO PROVIDE FOR THE INCLUSION OF COSTS OF PRELIMINARY AND FEASIBILITY STUDIES FOR WATER CONSERVANCY DISTRICTS AS COSTS OF CONSTRUCTION."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 89-3411, R.C.M. 1947, is amended to read as follows:

"89-3411. Reimbursement for expenses of organizing election. If organized, the district shall reimburse the county, or counties, for the expenses incurred in the organizing election.

The costs of conducting the preliminary and feasibility studies shall be considered costs of construction of an approved project and shall be included in determination of the repayment schedules by the directors of the district."

APPENDIX C

_____ BILL NO. _____

INTRODUCED BY _____

89-105

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 89-105, R.C.M. 1947, TO REQUIRE WATER USER APPROVAL BEFORE CAPITAL IMPROVEMENTS ARE MADE ON WATER PROJECTS IN CASES WHERE CONSTRUCTION ESTIMATE IS FIVE PERCENT (5%) OR MORE ABOVE THE ORIGINAL BOARD ESTIMATE."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 89-105, R.C.M. 1947, is amended to read as follows:

"89-105. Power of board to construct works and to act beyond jurisdiction. The board is hereby authorized to construct, whenever it shall deem such construction expedient, any public works as hereinabove defined, the cost of such construction to be paid wholly by means of or with the proceeds of revenue bonds hereinafter authorized or of a grant to aid in financing such construction from the United States of America or any instrumentality or agency thereof and of other funds provided under the authority of this act. Before constructing any project, the board shall make estimates of the cost of the project, of the cost of maintaining, repairing and operating the same, and of the revenues to be derived therefrom, and no such project shall be constructed unless, according to such estimates, the revenues to be derived therefrom will be sufficient to pay the cost of maintaining, repairing and operating the same, and to pay the principal and interest of revenue bonds which may be issued for the cost of such project; provided, however, that in connection with the issuance of any of such bonds, the failure of the board to make the estimates required by this section or to make same in proper form shall in no way affect the validity or enforceability of any such bonds or of the trust indenture, resolution or other security therefor.

<u>However, should the bid of the lowest responsible bidder on any capital improvement associated with public works as defined in this section exceed the board estimates of the cost of the improvements by more than five percent (5%), the board shall obtain approval from the works user association before the bid is accepted.</u>

The purpose of this act is to meet, so far as possible, a state-wide need for the conservation and use of water, through the construction and operation of projects designed for such purposes. The board is therefore empowered to make such investigations as may be necessary to plan and carry out a comprehensive state-wide program of water conservation. The projects to be finally constructed shall qualify as parts of such state-wide program and shall be approved by the board upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance and repair and the amortization of the cost of the construction; provided, however, that the failure of the board to determine such prospective ability of a project shall in no way affect the validity or enforceability of any of such bonds or of the trust indenture, resolution, or other security therefor.

The board may exercise any of its powers:

(a) In any adjoining state, unless the exercise of such power is not permitted under the laws of such state or of the United States of America.

(b) In any national forest or public domain of the United States of America adjoining, or located in, the state of Montana, unless the exercise of such powers is not permitted under the laws of the United States of America.

(c) In any adjoining country unless the exercise of such powers is not permitted under the laws of such country or of the United States or under the treaties between such country and the United States; provided that the provisions of sections 89-120, 89-121, 89-122 and 89-124 shall not apply to waters appropriated and located outside the state so long as such waters are located outside the state or to rights in waters appropriated and located outside the state, and that all such waters shall be appropriated and all rights in such waters acquired by the board in compliance with the laws of the jurisdiction in which such waters are located and appropriated and with the laws of the United States."

APPENDIX D

_____ BILL NO. _____

INTRODUCED BY _____

89-115

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 89-115, R.C.M. 1947, TO GRANT SPECIFIC AUTHORITY OF THE WATER RESOURCES BOARD TO PROVIDE FOR THE DISPOSAL OF WATER PROJECTS; AND TO INCLUDE A WAIVER OF LIABILITY FROM SUIT ON BEHALF OF THE STATE."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 89-115, R.C.M. 1947, is amended to read as follows:

"89-115. Water funds--rates--sale of water--lease and sale of water rights and property. The board is hereby authorized and empowered, subject to the provisions of this act, to fix and establish the prices, rates and charges at which any and all the resources and facilities made available under the provisions of this act shall be sold and disposed of; to enter into any and all contracts and agreements, and to do any and all things which in its judgment are necessary, convenient or expedient for the accomplishment of any and all the purposes and objects of this act, under such general regulations and upon such terms, limitations and conditions as it shall prescribe; and it is and shall be the duty of the board to enter into such contracts and fix and establish such prices, rates and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of any and all of the works authorized by this act, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds as they severally become due and payable; provided, that nothing contained in this act shall authorize any change, alteration or revision of any such rates, prices or charges as established by any contract entered into under authority of this act except as provided by any such contract.

<u>Since the incorporated water users' associations are sustaining and responsible for the operations of the works, such corporations are also solely liable for any court action which may be brought against them or the state of Montana for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions.</u>

Every contract made by the board for the sale of water, use of water, water storage or other service, or for the sale of any property or facilities, shall provide that in the event of any failure or default in the payment of any moneys specified in such contract to be paid to the board, the board may, upon such notice as shall be prescribed in such contract, terminate such contract and all obligations thereunder. The act of the board in ceasing on any such default to furnish or deliver water, use of water, water storage or other service under such contract shall not deprive the board of, or limit any remedy provided by such contract or by law for the recovery of any and all moneys due or which may become due under such contract.

The board is empowered to sell, transfer to user associations, abandon or otherwise dispose of any rights of way, easements or property when it shall determine that the same is no longer needed for the purposes of this act, or to lease or rent the same or to otherwise take and receive the income or profit and revenue therefrom. A determination shall be made by the board as to the market value of rights of way, easements or property to be sold, transferred, abandoned or otherwise disposed of. All income or profit and revenue of the works and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of the works, property and facilities acquired under the provisions of this act, shall be paid to the credit of the appropriate water fund."

APPENDIX E

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA REPEAL OF ARTICLE II, SECTION 18, OF THE 1972 CONSTITUTION OF MONTANA RELATING TO WAIVER OF SOVEREIGN IMMUNITY BY THE STATE OF MONTANA."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Article II, section 18 of the constitution of the state of Montana is hereby repealed as of July 1, 1973.

Section 2. When this amendment is submitted to the electors of the state of Montana, there shall be printed on the ballot the full title and substance of Article II, section 18, and the following words:

"▱ For repeal of the above section.

▱ Against repeal of the above section."